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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION**

Sarah Ferrara,

Plaintiff,

vs.

U.S. BANCORP d/b/a US BANK, NA,

Defendant.

Case No.: '16CV0129 MMAJLB

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiff, SARAH FERRARA (“Plaintiff”), on behalf of herself, by and through the undersigned attorneys, alleges against the Defendant, U.S. BANCORP d/b/a U.S. BANK, NA (“Defendant”), as follows:

**NATURE OF THE CASE**

1. Plaintiff brings this action on behalf of herself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer

1 Protection Act (hereinafter “TCPA”), 47 U.S.C. § 227 *et seq.*, and the Rosenthal  
2 Fair Debt Collection Practices Act, California Civil Code § 1788 *et seq.*

3 **JURISDICTION AND VENUE**

4 2. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C.  
5 §227(b)(3). *See, Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012),  
6 holding that federal and state courts have concurrent jurisdiction over private suits  
7 arising under the TCPA.

8 3. Venue is proper in the United States District Court for the Southern District  
9 of California pursuant to 28 U.S.C § 1391(b) because Plaintiff resides within this  
10 District and a substantial part of the events or omissions giving rise to the herein  
11 claims occurred, or a substantial part of property that is the subject of the action is  
12 situated within this District.

13 **PARTIES**

14 4. Plaintiff is a natural person residing in San Diego, San Diego County,  
15 California and is a “person” as defined by 47 U.S.C. § 153 (10) and Cal Civ Code  
16 § 1788.2(g).

17 5. Plaintiff is a “debtor” as defined by Cal Civ Code § 1788.2(h).

18 6. Defendant is a corporation doing business in the State of California, with its  
19 corporate address listed as 800 Nicollet Mall, Minneapolis, Minnesota 55402.

20 7. Defendant is a “person” as defined by 47 U.S.C. § 153 (10) and Cal Civ  
21 Code § 1788.2(g).

22 8. Defendant is a “debt collector” as defined by Cal Civ Code § 1788.2(c).

23 9. On information and belief, Defendant is attempting to collect a “consumer  
24 debt” from Plaintiff as that term is defined and used in Cal Civ Code § 1788.2(e).

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**FACTUAL STATEMENT**

10. In or around November of 2015, Plaintiff began receiving automated telephone calls from Defendant from phone numbers, including but not limited to telephone number: 877-838-4347.

11. On information and belief, Defendant also communicated, or attempted to communicate, with Plaintiff from another telephone number belonging to Defendant's.

12. Defendant used an "automatic telephone dialing system", as defined by 47 U.S.C. § 227(a) (1) to place its telephone calls to Plaintiff seeking to collect a consumer debt allegedly owed by Plaintiff, Sarah Ferrara.

13. Defendant's calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

14. Defendant's calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

15. Defendant called Plaintiff on Plaintiff's cellular telephone number: 619-808-8006.

16. Defendant never received Plaintiff "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

17. On or about November 19, 2015 at 12:30 P.M., Plaintiff spoke with Defendant, or a representative thereof named "Jackie", and Plaintiff revoked any actual or implied "prior express consent" for Defendant to contact her cellular phone in any manner including the usage of an automatic telephone dialing system or an artificial or prerecorded voice on her cellular telephone pursuant to 47 U.S.C. § 227(a) (1), 47 U.S.C. § 227(b)(1), and 47 U.S.C. § 227(b)(1)(A).

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18. Despite Plaintiff's revocation of any actual or implied "prior express consent" to the actions as outlined above Defendant did not cease the telephone calls.

19. Between November 24, 2015 and December 4, 2015, Defendant placed approximately 26 ("twenty-six") calls to Sarah Ferrara using an "automatic telephone dialing system", as defined by 47 U.S.C. § 227(a) (1) to place its telephone calls to Plaintiff seeking to collect a consumer debt allegedly owed by Plaintiff, Sarah Ferrara.

**FIRST CAUSE OF ACTION**  
**NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**  
**PROTECTION ACT**  
**47 U.S.C. § 227**

20. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-19.

21. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 *et seq.*

22. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B).

23. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION**  
**KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**  
**CONSUMER PROTECTION ACT**  
**47 U.S.C. § 227 et. seq.**

24. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-23.

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1 25. The foregoing acts and omissions of Defendant constitute numerous and  
2 multiple knowing and/or willful violations of the TCPA, including but not limited  
3 to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

4 26. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. §*  
5 *227 et seq.*, Plaintiff is entitled an award of \$1,500.00 in statutory damages, for  
6 each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. §*  
7 *227(b)(3)(C)*.

8 27. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in  
9 the future.

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11 **THIRD CAUSE OF ACTION**  
12 **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**  
13 **CALIFORNIA CIVIL CODE § 1788.11(d) & (e)**

14 28. Plaintiff repeats and incorporates by reference into this cause of action the  
15 allegations set forth above at Paragraphs 1-27.

16 29. Defendant has called Plaintiff a minimum of 26 ("twenty-six") times in  
17 violation of *47 U.S.C. § 227 et seq.*

18 30. Defendant called Plaintiff a minimum of 26 ("twenty-six") times in the  
19 period of 1 month in order to harass Plaintiff.

20 31. Defendant would call Plaintiff as often as 4-5 times per day.

21 32. Defendant's actions are in violation of § 1788.11(d) and (e) of the California  
22 Civil Code which prohibits communicating, by telephone or in person, with the  
23 debtor with such frequency as to be unreasonable and to constitute harassment to  
24 the consumer and prohibits causing a telephone to ring repeatedly and continuously  
25 to annoy the person called.

26 33. As a result of Defendant's violations of Cal Civ Code § 1788.2(d) and (e),  
27 Plaintiff is entitled to an award of no less than \$100.00 and up to \$1,000.00 for  
28 Defendant's willful and knowing violations per Cal Civ Code § 1788.30(b) plus  
attorney's fees and costs per Cal Civ Code § 1788.30(c).

**JURY TRIAL DEMAND**

34. Plaintiff demands a jury trial on all issues so triable.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully request that this Court enter judgment against the Defendant, and on behalf of the Plaintiff, for the following:

- a. That an order be entered declaring the Defendant's actions, as described above, in violation of the TCPA and the Rosenthal Fair Debt Collection Practices Act;
- b. That judgment be entered in favor of Plaintiff against Defendant for each and every violation of 47 U.S.C. § 227(b)(1)(A)(iii) pursuant to 47 U.S.C. § 227(b)(3)(B);
- c. That the Court award treble damages to Plaintiff for each and every violation of the TCPA the Court deems willful and knowing;
- d. That judgment be entered in favor of Plaintiff against Defendant for a violation of the Rosenthal Fair Debt Collection Practices Act;
- e. That the Court award statutory damages to Plaintiff for the Rosenthal Fair Debt Collection Practices Act violations in accordance with § 1788.30(b) of the California Civil Code;
- f. That the Court grant such other and further relief as may be just and proper.

Dated: January 19, 2016

Respectfully Submitted,

**LEISINGER LAW, LLP**

By: /s/ Rory Leisinger

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